

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

TARRANCE DARON WHITLOCK §
v. § CIVIL ACTION NO. 5:14cv94
WILLIAM STEPHENS, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON DEFENDANTS DR. STANLEY, McPEAK, AND BARKER

The Plaintiff Tarrance Whitlock, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The named Defendants are TDCJ-CID Director William Stephens, Access to Courts Supervisor Vickie Barrows, Warden Dawn Grounds (now known as Dawn Merchant), Telford Unit law librarian Chequita Dunbar, Dr. Reginaldo Stanley, practice manager Cathy McPeak, and physician's assistant Jamie Barker.

The Defendants Stephens, Barrows, Merchant, and Dunbar have filed a motion to dismiss, and the Defendants Dr. Stanley, McPeak, and Barker have filed a separate motion to dismiss. This Memorandum Opinion concerns the Report of the Magistrate Judge recommending the motion to dismiss by Dr. Stanley, McPeak, and Barker be granted. Plaintiff received a copy of this Report together with a separate Report involving the claims against Stephens, Barrows, Merchant, and Dunbar; he filed objections to the other Report, but did not object to the Report involving Dr. Stanley, Barker, and McPeak. A review of the objections he did file, to the other Report, shows these objections contain no mention of the claims against Dr. Stanley, Barker, or McPeak.

I. Background

Plaintiff set out three specific causes of action against Dr. Stanley, Barker, and McPeak. These are: (1) they violated his right to due process by failing to follow prison policy and issue him a medical pass; (2) they violated his right to equal protection by discriminating against him and denying him a medical pass; and (3) they violated his right to be free from cruel and unusual punishment through deliberate indifference to his serious medical condition. The Defendants filed a motion to dismiss, to which Plaintiff filed a response.

II. The Report of the Magistrate Judge

After review of the pleadings, the Magistrate Judge issued a Report recommending that the motion to dismiss be granted. The Magistrate Judge concluded that: (1) Plaintiff was not denied due process through a failure by prison officials to follow prison policies or the failure to furnish him with such medical passes as he believed appropriate; (2) the fact Plaintiff's grievances were denied is not a violation of due process; (3) Plaintiff was not denied equal protection, either as a writ writer or as a class of one; (4) Plaintiff was not subjected to cruel and unusual punishment or to deliberate indifference to his serious medical needs; and (5) the Defendants Dr. Stanley, Jamie Barker, and Cathy McPeak are entitled to qualified and Eleventh Amendment immunity.

Plaintiff received a copy of this Report on October 7, 2016. He filed no objections thereto. Thus, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

III. Conclusion

The Court has reviewed the record in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243

(1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED the Report of the Magistrate Judge (docket no. 55) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED the motion to dismiss filed by the Defendants Dr. Stanley, Barker, and McPeak (docket no. 49) is **GRANTED** and the claims against these Defendants are **DISMISSED WITH PREJUDICE**. Because all claims and parties have been dismissed, it is further

ORDERED the above-styled civil action is **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief may be granted. It is further

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

So ORDERED and SIGNED this 7th day of December, 2016.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE